

Senate Bill No. 1106

Passed the Senate September 7, 2005

Secretary of the Senate

Passed the Assembly September 1, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 12200 of, to amend the heading of Chapter 4 (commencing with Section 12150) of Part 2 of Division 2 of, to add Sections 6615, 12201, 12203, 12207, 12209, 12211, 12215, and 12217 to, to add Chapter 3.5 (commencing with Section 22150) to Part 3 of Division 2 of, to repeal Sections 10233, 10308.5, 10354, 10507, 12150, 12155, 12157, 12158, 12159, 12160, 12161, 12162, 12162.5, 12163, 12164, 12168, 12169, 12181, 12182, 12185, 12210, 12213, 12225, and 12226 of, to repeal Article 8.5 (commencing with Section 10855) of Chapter 2.5 of, and Article 2.1 (commencing with Section 12170) of Chapter 4 of, Part 2 of Division 2 of, and to repeal and add Section 12205 of, the Public Contract Code, and to amend Sections 40183, 42920, 49120, and 49300 of, and to repeal Chapter 4 (commencing with Section 42200) of, and Chapter 6 (commencing with Section 42360) of, Part 3 of Division 30 of, the Public Resources Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1106, Committee on Environmental Quality. Public contracts: procurement: recycled goods: solid waste.

(1) Existing law provides various procedures for the acquisition of goods and services by the state. Existing law also provides various procedures and requirements pertaining to the purchase of recycled items by the state.

This bill would consolidate, update, and clarify existing recycling laws, eliminate duplicative provisions, and establish or restate recycling goals and reporting requirements of state agencies in accordance with specified timeframes, as provided. The bill would also require local public entities to purchase recycled products instead of nonrecycled products, as specified.

(2) Existing law defines a “rural city” for purposes of certain provisions relating to waste management as an “incorporated city” that meets certain conditions. Existing law authorizes the formation of garbage and refuse disposal districts under certain conditions, including that the governing board of a district that includes only one “incorporated city” have 2 members selected

by the board of supervisors and one member selected by the city council. Existing law also authorizes the legislative body of an “incorporated city” to contract for garbage collection and disposal, as specified.

This bill would remove the reference to cities described in these provisions as being incorporated.

The people of the State of California do enact as follows:

SECTION 1. Section 6615 is added to the Public Contract Code, to read:

6615. For all state contracts, and, to the extent feasible, all federally funded contracts awarded pursuant to Chapter 1 (commencing with Section 10100), Chapter 2 (commencing with Section 10290), Chapter 2.5 (commencing with Section 10700), Chapter 3 (commencing with Section 12100), Chapter 3.5 (commencing with Section 12120), and Chapter 3.6 (commencing with Section 12125) of Part 2 of Division 2 shall be in compliance with Section 12205.

SEC. 2. Section 10233 of the Public Contract Code is repealed.

SEC. 3. Section 10308.5 of the Public Contract Code is repealed.

SEC. 4. Section 10354 of the Public Contract Code is repealed.

SEC. 5. Section 10507 of the Public Contract Code is repealed.

SEC. 6. Article 8.5 (commencing with Section 10855) of Chapter 2.5 of Part 2 of the Public Contract Code is repealed.

SEC. 7. The heading of Chapter 4 (commencing with Section 12150) of Part 2 of Division 2 of the Public Contract Code is amended to read:

CHAPTER 4. STATE AGENCY BUY RECYCLED CAMPAIGN

SEC. 8. Section 12150 of the Public Contract Code is repealed.

SEC. 9. Section 12155 of the Public Contract Code is repealed.

SEC. 10. Section 12157 of the Public Contract Code is repealed.

SEC. 11. Section 12158 of the Public Contract Code is repealed.

SEC. 12. Section 12159 of the Public Contract Code is repealed.

SEC. 13. Section 12160 of the Public Contract Code is repealed.

SEC. 14. Section 12161 of the Public Contract Code is repealed.

SEC. 15. Section 12162 of the Public Contract Code is repealed.

SEC. 16. Section 12162.5 of the Public Contract Code is repealed.

SEC. 17. Section 12163 of the Public Contract Code is repealed.

SEC. 18. Section 12164 of the Public Contract Code is repealed.

SEC. 19. Section 12168 of the Public Contract Code is repealed.

SEC. 20. Section 12169 of the Public Contract Code is repealed.

SEC. 21. Article 2.1 (commencing with Section 12170) of Chapter 4 of Part 2 of Division 2 of the Public Contract Code is repealed.

SEC. 22. Section 12181 of the Public Contract Code is repealed.

SEC. 23. Section 12182 of the Public Contract Code is repealed.

SEC. 24. Section 12185 of the Public Contract Code is repealed.

SEC. 25. Section 12200 of the Public Contract Code is amended to read:

12200. For the purpose of this article, the following definitions shall apply:

(a) “Board” means the California Integrated Waste Management Board, as defined pursuant to Section 40110 of the Public Resources Code.

(b) “Business” includes bidders, contractors, and other interested parties that provide services to, or sell products to, the state.

(c) “Department” means the Department of General Services.

(d) “Director” means the Director of General Services.

(e) “Postconsumer material” means a finished material that would have been disposed of as a solid waste, having completed its life cycle as a consumer item, and does not include manufacturing wastes.

(f) “Product categories” include paper products, printing, and writing papers, compost, cocompost, or mulch, glass, oil, plastic, paint, tires, tire-derived products, antifreeze, and metal.

(g) “Purchase” means any contractual agreement that state agencies use to obtain goods or materials.

(h) “Recycled products” mean goods or materials that meet the requirements identified in Section 12209, including any good or material that has been reused or refurbished without substantial alteration of its original form.

(i) “Reportable purchase” means the purchase of any goods or materials, with recycled content or not, that may be reported or categorized or classified within one of the product categories identified in Section 12207.

(j) “Reportable recycled product purchase” means the purchase of any goods or materials that meet the requirements identified in Section 12209, that may be reported or categorized or classified within one of the product categories identified in Section 12207, including any good or material that has been reused or refurbished without substantial alteration of its original form.

(k) “SABRC” means the State Agency Buy Recycled Campaign.

(l) “Secondary material” means fragments of finished products or finished products of a manufacturing process, that has converted a resource into a commodity of real economic value, but does not include excess virgin resources of the manufacturing process, such as fibers recovered from wastewater, trimmings of paper machine rolls, mill broke, plastic, or metal trimmings, or shavings, or other residue from a manufacturing process. Secondary material does not include postconsumer material, so

that the secondary material plus the postconsumer material plus the virgin material adds up to 100 percent of the product.

(m) “State agency” means each entity identified in Section 11000 of the Government Code, and includes the California State University.

SEC. 26. Section 12201 is added to the Public Contract Code, to read:

12201. (a) The Legislature finds and declares that it is the policy of the state to conserve and protect its resources. The Legislature further finds and declares that the use of recycled products produced as the result of the superior waste management efforts by the state and local governmental entities will help conserve resources.

(b) It is the intent of the Legislature that the state pursue all feasible measures to improve markets for recycled products including, but not limited to, bid evaluation preferences for purchases made by the state.

(c) If fitness and quality are equal, each state agency shall purchase recycled products instead of nonrecycled products whenever recycled products are available at the same or a lesser total cost than nonrecycled products.

SEC. 27. Section 12203 is added to the Public Contract Code, to read:

12203. Each state agency shall ensure each of the following:

(a) At least 50 percent of reportable purchases are recycled products.

(b) The requirements specified in this article apply to all reportable purchases of state agencies for product categories listed in this article.

(c) The reportable purchases of state agencies shall meet each requirement for, and be applied to the total dollar amount of, each specified product category as defined in this article. The purchase of a recycled product from one category may not be applied toward the requirements for, or the total dollar amount of, any other category listed in this article.

(d) Each state agency shall require the businesses with whom it contracts to use, to the maximum extent economically feasible in the performance of the contract work, recycled products.

SEC. 28. Section 12205 of the Public Contract Code is repealed.

SEC. 29. Section 12205 is added to the Public Contract Code, to read:

12205. (a) (1) All state agencies shall require all businesses to certify in writing the minimum percentage, if not the exact percentage, of postconsumer material in the products, materials, goods, or supplies offered or sold to the state regardless of whether the product meets the requirements of Section 12209. The certification shall be furnished under penalty of perjury. The certification shall be provided regardless of content, even if the product contains no recycled material.

(2) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

(3) A state agency may waive the certification requirement if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet Web site.

(b) (1) All businesses shall certify in writing to the contracting officer or his or her representative the minimum percentage, if not the exact percentage, of postconsumer material in the products, materials, goods, or supplies being offered or sold to the state regardless of whether the product meets the requirements of Section 12209. The certification shall be furnished under penalty of perjury. The certification shall be provided regardless of content, even if the product contains no recycled material.

(2) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

(3) A state agency may waive the certification requirement if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet Web site.

SEC. 30. Section 12207 is added to the Public Contract Code, to read:

12207. This article applies to the purchase of goods and materials from the following product categories:

(a) Paper products, including, but not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, and hanging files, building insulation and panels, corrugated boxes, tissue, and toweling.

(b) Printing and writing papers including, but not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications.

(c) Mulch, compost, and cocompost products including soil amendments, erosion controls, soil toppings, ground covers, weed suppressants, and organic materials used for water conservation.

(1) “Compost” means a product that meets the following requirements:

(A) It results from the controlled biological decomposition of organic materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility, or other source of organic materials.

(B) It is produced by a public or private supplier that is in compliance with the board’s composting operations regulatory requirements.

(2) “Cocompost” means a product that meets the following requirements:

(A) It results from the controlled biological decomposition of a blend of organic materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility, and also including, but not limited to, biosolids or other comparable substitutes such as livestock, horse, or other animal manure, food residues, or fish processing byproducts.

(B) It is produced by a public or private supplier that is in compliance with the board’s composting operations regulatory requirements.

(3) “Mulch” means a product that meets the following requirements:

(A) It results from the mechanical breakdown (chipping and grinding) of materials, including, but not limited to, yard trimmings and wood byproducts that are separated from the municipal solid waste stream at the source of generation or at a centralized facility.

(B) It is produced by a public or private supplier that is in compliance with the board’s composting operations regulatory requirements.

(d) Glass products including, but not limited to, windows, test tubes, beakers, laboratory or hospital supplies, fiberglass (insulation), reflective beads, tiles, construction blocks, desktop accessories, flat glass sheets, loose-grain abrasives, deburring media, liquid filter media, and containers.

(e) Lubricating oils including, but not limited to, any oil intended for use in a crankcase, transmission, engine, power steering, gearbox, differential chainsaw, transformer dielectric fluid, cutting, hydraulic, industrial, or automobile, bus, truck, vessel, plane, train, heavy equipment, or machinery powered by an internal combustion engine.

(f) (1) Plastic products including, but not limited to, printer or duplication cartridges, diskette, carpet, office products, plastic lumber, buckets, wastebaskets, containers, benches, tables, fencing, clothing, mats, packaging, signs, posts, binders, sheet, buckets, building products, garden hose, and trays.

(2) For purposes of this subdivision, “printer or duplication cartridges” has the same meaning as described in paragraph (2) of subdivision (f) of Section 12209.

(g) Paint, including, but not limited to, water-based paint, graffiti abatement, interior and exterior, and maintenance.

(h) Antifreeze, including recycled antifreeze, and antifreeze containing a bittering agent or made from polypropylene or other similar nontoxic substance.

(i) Tires including, but not limited to, truck and bus tires, and those used on fleet vehicles and passenger cars.

(j) Tire-derived products including, but not limited to, flooring, mats, wheelchair ramps, playground cover, parking bumpers, bullet traps, hoses, bumpers, truck bedliners, pads,

walkways, tree ties, road surfacing, wheel chocks, rollers, traffic control products, mudflaps, and posts.

(k) Metal including, but not limited to, staplers, paper clips, steel furniture, desks, pedestals, scissors, jacks, rebar, pipe, plumbing fixtures, chairs, ladders, file cabinets, shelving, containers, lockers, sheet metal, girders, building and construction products, bridges, braces, nails, and screws.

SEC. 31. Section 12209 is added to the Public Contract Code, to read:

12209. For purposes of this article, the following minimum content requirements apply:

(a) Recycled paper products shall consist of at least 30 percent, by fiber weight, postconsumer fiber.

(b) (1) Recycled printing and writing paper shall consist of at least 30 percent, by fiber weight, postconsumer fiber.

(2) Printed newspapers that meet the requirements of Chapter 15 (commencing with Section 42750) of Part 3 of Division 30 of the Public Resources Code shall be considered in compliance with the requirements of this section.

(c) For recycled compost, cocompost, and mulch, at least 80 percent of the product shall consist of materials, including, but not limited to, the materials listed in subdivision (c) of Section 12207, that would otherwise be normally disposed of in landfills.

(d) For recycled glass, the total weight shall consist of at least 10 percent postconsumer material.

(e) Rerefined lubricating oil shall have a base oil content consisting of at least 70 percent rerefined oil.

(f) (1) For recycled plastic products, other than printer or duplication cartridges, the total weight shall consist of at least 10 percent postconsumer material.

(2) Recycled printer or duplication cartridges shall comply with either the requirements set forth in subdivision (e) of Section 12156 or the general requirement for recycled plastic products set forth in paragraph (1).

(g) Recycled paint shall have a recycled content consisting of at least 50 percent postconsumer paint. Preconsumer or secondary paint does not qualify as “recycled paint” pursuant to this subdivision. If paint containing 50 percent postconsumer content is unavailable, or is restricted by a local air quality

management district, a state agency may substitute paint with at least 10 percent postconsumer content.

(h) Recycled antifreeze fluid shall have a recycled content of at least 70 percent postconsumer materials.

(i) Retreaded tires must use an existing casing that has undergone an approved or accepted recapping or retreading process, in accordance with Chapter 7 (commencing with Section 42400) of Part 3 of Division 30 of the Public Resources Code.

(j) For tire-derived products, the total content shall consist of at least 50 percent recycled used tires.

(k) For recycled metal products, the total weight shall consist of at least 10 percent postconsumer material.

(l) For reused or refurbished products, there is no minimum content requirement.

SEC. 32. Section 12210 of the Public Contract Code is repealed.

SEC. 33. Section 12211 is added to the Public Contract Code, to read:

12211. (a) Each state agency shall report annually to the board their progress in meeting the recycled product purchasing requirements using the SABRC report format provided by the board.

(b) On or before October 31 of each year, the department shall provide to the board the following information:

(1) A list, by category, of individual reportable recycled products, materials, goods, and supplies that were available for purchase by state agencies from a statewide-use contract, agreement, or schedule during the previous fiscal year.

(2) A list, by category, of all reportable products, materials, goods, and supplies that were available for purchase by state agencies from a statewide-use contract, agreement, or schedule, including contract, agreement, or schedule tracking numbers, during the previous fiscal year.

(c) The board shall annually provide an agency-specific report to the Legislature identifying all state agency SABRC reporting figures.

(d) Every three years, the board shall provide, as part of the report described in subdivision (c), recommendations to the Legislature for changes necessary to increase the purchase of

recycled content products, materials, goods, and supplies and improve SABRC program efficiency.

SEC. 34. Section 12213 of the Public Contract Code is repealed.

SEC. 35. Section 12215 is added to the Public Contract Code, to read:

12215. Each state agency may, at the discretion of the individual agency director or his or her designee, print a statement on recycled products selected by the agency director. This statement shall be determined by the department, in consultation with the board, and shall be similar to the following: “Contains at least ____ percent postconsumer material.”

SEC. 36. Section 12217 is added to the Public Contract Code, to read:

12217. (a) If at any time a requirement has not been met, the department, in consultation with the board, shall review purchasing policies and shall make recommendations for immediate revisions to ensure that the recycled product purchasing requirements are met.

(b) In determining purchasing specifications, with the exception of any specifications that have been established to preserve the public health and safety, all state purchasing specifications shall be established in a manner that results in the maximum state purchase of recycled products.

(c) If a recycled product, as defined in subdivision (h) of Section 12200, costs more than the same product made with virgin material, the state agency shall, if feasible, purchase fewer of those more costly products or apply the cost savings, if any, gained from buying other recycled products towards the purchase of those more costly products to meet the solid waste diversion goals of Section 41780.

(d) Each state agency shall establish purchasing practices that ensure the purchase of goods and materials that may be recycled or reused. Each state agency shall continue activities for the collection, separation, and recycling of recyclable materials and may appoint a recycling coordinator to assist in implementing this section.

(e) To assist the state in meeting the requirements of this article, each state agency, and the department, in consultation with the board, may also establish recycled product-only bids,

cooperative purchasing arrangements, or other mechanisms to meet the requirements for recycled products and to encourage the maximum state purchase of recycled products.

(f) The department, in consultation with the board, shall review and revise the purchasing specifications used by state agencies in order to eliminate restrictive specifications and discrimination against the purchase of recycled products and to ensure that they are drafted in a manner that results in the maximum state purchase of recycled products. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards.

(g) Any state agency that is required to submit an SABRC report to the board, pursuant to Section 12211, is subject to a review conducted by the board or its designee.

SEC. 37. Section 12225 of the Public Contract Code is repealed.

SEC. 38. Section 12226 of the Public Contract Code is repealed.

SEC. 39. Chapter 3.5 (commencing with Section 22150) is added to Part 3 of Division 2 of the Public Contract Code, to read:

CHAPTER 3.5. RECYCLED PRODUCT PROCUREMENT
MANDATES PERTAINING TO LOCAL GOVERNMENTS

22150. (a) If fitness and quality are equal, each local public entity shall purchase recycled products, as defined in Section 12200, instead of nonrecycled products whenever recycled products are available at the same or a lesser total cost than nonrecycled items.

(b) A local public entity may give preference to suppliers of recycled products.

(c) A local public entity may define the amount of this preference.

22151. In bids in which the local government has reserved the right to make multiple awards, the recycled product preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of firms offering recycled products in the contract award.

22152. (a) All local public entities shall require all business, as defined in Section 12200, to certify in writing the minimum, if not exact, percentage of postconsumer materials in the products, materials, goods, or supplies, offered or sold. All contract provisions impeding the consideration of recycled products shall be deleted in favor of performance standards.

(b) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

22153. All printing contracts made by any local public entity shall provide that the paper used shall meet the recycled content requirements of Section 12209.

22154. (a) All business shall certify in writing to the contracting officer, or his or her representative, the minimum, if not exact, percentage of postconsumer material in the products, materials, goods, or supplies being offered or sold to any local public entity.

(b) With respect to printer or duplication cartridges that comply with the requirements of subdivision (e) of Section 12156, the certification required by this subdivision shall specify that the cartridges so comply.

(c) A state agency may waive the certification requirement if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet Web site.

SEC. 40. Section 40183 of the Public Resources Code is amended to read:

40183. (a) “Rural city” means either of the following:

(1) A city that has a geographic area of less than three square miles, has a current waste disposal rate of less than 100 cubic yards per day, or 60 tons per day, and is located in a rural area.

(2) A city that has a population density of less than 1,500 people per square mile, has a current waste disposal rate of less than 100 cubic yards per day, or 60 tons per day, and is located in a rural area.

(b) Nothing in this section shall affect any reduction granted to a rural city or rural county by the board pursuant to Section 41787 prior to September 1, 1994.

SEC. 41. Chapter 4 (commencing with Section 42200) of Part 3 of Division 30 of the Public Resources Code is repealed.

SEC. 42. Chapter 6 (commencing with Section 42360) of Part 3 of Division 30 of the Public Resources Code is repealed.

SEC. 43. Section 42920 of the Public Resources Code is amended to read:

42920. (a) On or before February 15, 2000, the board shall adopt a state agency model integrated waste management plan for source reduction, recycling, and composting activities.

(b) (1) On or before July 1, 2000, each state agency shall develop and adopt, in consultation with the board, an integrated waste management plan, in accordance with the requirements of this chapter. The plan shall build upon existing programs and measures, including the state agency model integrated waste management plan adopted by the board pursuant to subdivision (a), that will reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all state agency offices and facilities, including any leased locations. It is the intent of the Legislature that the local jurisdiction and the state agency or large state facility located within that jurisdiction work together to implement the state agency integrated waste management plan.

(2) Each state agency shall submit an adopted integrated waste management plan to the board for review and approval on or before July 15, 2000. The board shall adopt procedures for reviewing and approving those integrated waste management plans. The board shall complete its plan review process on or before January 1, 2001.

(3) If a state agency has not submitted an adopted integrated waste management plan or the model integrated waste management plan with revisions to the board by January 1, 2001, or if the board has disapproved the plan that was submitted, then the model integrated waste management plan, as revised by the board in consultation with the agency, shall take effect on that date, or on a later date as determined by the board, and shall have the same force and effect as if adopted by the state agency.

(c) Notwithstanding subdivision (e) of Section 12217 of the Public Contract Code, at least one solid waste reduction and recycling coordinator shall be designated by each state agency. The coordinator shall perform the duties imposed pursuant to this

chapter using existing resources. The coordinator shall be responsible for implementing the integrated waste management plan and shall serve as a liaison to other state agencies and coordinators.

(d) The board shall provide technical assistance to state agencies for the purpose of implementing the integrated waste management plan.

SEC. 44. Section 49120 of the Public Resources Code is amended to read:

49120. (a) Within 30 days after the filing with the Secretary of State of the certified copy of the order of formation, a governing board of trustees for the district shall be appointed.

(b) The governing board of a district is a board of directors of not less than three members. The district board shall be appointed as follows:

(1) If the district includes only one city, two members of the governing body shall be selected by the board of supervisors and one member of the governing body shall be selected by the city council.

(2) If the district includes two or more cities, only one member of the governing body of the district shall be selected by the board of supervisors to represent the unincorporated area. The legislative body of each city within the district shall appoint one member to represent each incorporated city within the district. If the selection of members pursuant to this subdivision results in the governing body having an even number of members, those members may appoint an additional member from the district at large.

(c) A vacancy shall be filled in the same manner as an original appointment. The person appointed shall reside within the area he or she represents.

SEC. 45. Section 49300 of the Public Resources Code is amended to read:

49300. The legislative body of a city may contract for the collection or disposal, or both, of garbage, waste, refuse, rubbish, offal, trimmings, or other refuse matter under the terms and conditions that are prescribed by the legislative body of the city by resolution or ordinance.

Approved _____, 2005

Governor